CEC Chardon Electrical *and* Industrial Union Department, AFL–CIO, on behalf of the United Rubber Workers of America, AFL–CIO. Cases 10–CA–24558 and 10–CA–24692

March 19, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On September 28, 1990, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The Charging Party filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, CEC Chardon Electrical, Greeneville, Tennessee, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] The Charging Party excepts to the judge's failure to find that the Respondent's discharge of employees Sams and Gray violated Sec. 8(a)(3) and (1) of the Act. In so doing, the Charging Party, inter alia, disputes the judge's reliance on his finding that there was no evidence of union animus prior to the discharges. The judge concluded that the Respondent in February 1990, shortly after the discharges of Sams and Gray, violated Sec. 8(a)(3) and (1) by giving employee Hice a verbal warning to cease her union activity and in April 1990 violated Sec. 8(a)(1) by harassing Hice about her union activity. There were no exceptions to these conclusions. Although these violations demonstrate union animus on the part of the Respondent, we find the evidence, as a whole, is insufficient to establish that Sams and Gray were discharged in violation of Sec. 8(a)(3) of the Act.

Victor McLemore, Esq., for the General Counsel.
Thaddeus R. Sobieski, Esq. and *Douglas Sullenberger, Esq. (Fisher & Phillips)*, of Atlanta, Georgia, for the Respondent.
George Barrett, Esq., of Nashville, Tennessee, for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on July 17, 1990, at Greeneville, Tennessee. The hearing was held pursuant to an order consolidating cases, an amended consolidated complaint issued on May 16, 1990, by the Regional Director for Region 10 of the National Labor Relations Board, and an order rescheduling the hearing by the Regional Director issued on June 7, 1990. The complaint in Case 10–CA–24558 is based on an amended charge filed by the Industrial Union Department, AFL–CIO, on behalf of the United Rubber Workers of America, AFL–CIO (the Charging Party or the Union) on March 5, 1990. The complaint in Case 10–CA–24692 is based on an original charge filed by the Charging Party on April 10, l990. The consolidated complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act) on or about January 17, 1990, by discharging and thereafter failing and refusing to reinstate its employees Roger Sams and Bobby Gray because of their engagement in protected concerted activities on behalf of the Union. The complaint also alleges that the Respondent harassed its employee Karen Hice on or about April 6, 1990, because of her union activities and thereby violated Section 8(a)(1) of the Act and that it issued a verbal warning to said employee Karen Hice on or about February 26, 1990, because of her union activities and thereby violated Section 8(a)(3) and (1) of the Act. The Respondent has, by its answers, filed on March 20 and May 29, 1990, denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified herein, and after due consideration of the briefs filed by the General Counsel and counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Business of Respondent

The complaint, as amended at the hearing, alleges, Respondent admits, and I find that the Respondent was, and has been at all times material herein, a Tennessee corporation with an office and place of business located at Greeneville, Tennessee, where it is engaged in the manufacture of molded rubber products and electrical components, that during the calendar year preceding the filing of the complaint, a representative period of all times material herein, Respondent sold to General Electric Company, an international corporation, finished products valued in excess of $50,000 which General Electric Company in turn sold and shipped to customers located outside the State of Tennessee, and that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find, that the Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Discharges of Roger Sams and Robert Gray*

Roger Sams and Robert Gray were both employed by Respondent as pressmen on January 17, 1990, the date of their discharge. Both Sams and Gray had been leading advocates

of the Union during an organizational campaign around May 1989 and had openly handbilled the Respondent and given handbills on behalf of the Union to management representatives. The Respondent admits that the employees were known to be leading supporters of the Union. There is no evidence of union animus or any other alleged unlawful conduct of the Respondent with the exceptions of the allegations concerning employee Hice which occurred after the January 17, 1990 discharge of Sams and Gray.

On January 16, 1990, Sams and Gray were assigned to presses in the same general area of Respondent's facility and were working a 7 a.m. to 3 p.m. shift. Sams was a 4-year employee who had been hired with the initial group of employees when Respondent opened this facility in 1986. Gray had been employed 18 months. Shortly before quitting time on January 16, Gray forgot to put in injection bushings in his press as he was operating it and as a result rubber, which has to be used as insulation on the inside of the ''elbows'' being molded in the press, coated the outside of the elbows. Gray then stopped the press and the damage was limited to four of the elbows in the press and Gray retained one to clean the rubber off the outside. Sams testified he took the other three to his station and put them on the top of his trash barrel which was full to the top to begin cleaning them off because his worktable was full and he wanted to help Gray as this occurred about 2:30 p.m., shortly before the quitting time of 3 p.m. Sams testified that shortly thereafter Supervisor Jeff Davis approached and asked him what he was doing with the elbows and he told Davis they had been damaged in Gray's press and he had taken them to his table to clean off the rubber. Davis then took the elbows and went to Gray's press and Sams could not hear this conversation. Gray testified that Davis brought these elbows to his worktable and placed them there and told him to leave them there. Gray and Sams left at 3 p.m., their normal quitting time. Employee April Foulks, who worked until 3:30 p.m. on that date as her normal hours, testified that she observed Manufacturing Manager Lloyd Covill, Supervisor Jeff Davis, Plant Engineer Andy Klepcik, and Executive Vice President and General Manager Jack Johnson all look at the elbows on Gray's table between 3 p.m. after Gray left and 3:30 p.m. when she left and observed one of them throw the elbows in the trash. On the next day, Sams and Gray worked until shortly prior to the end of their shift when they were called into a conference room by Supervisor Davis who was followed by Manufacturing Manager Covill and Plant Engineer Lepcik at which time Covill handed them termination slips stating as the reason for their termination the unauthorized disposal of company property and or failing to properly account for damaged materials. Sams and Gray were asked by Covill to sign their termination slips, which they did. Based on the foregoing and on the basis of the alleged violations of the Act occurring after this incident concerning employee Hice, the General Counsel contends that Respondent violated Section 8(a)(3) and (1) of the Act by the discharges of Sams and Gray.

In defense of its actions in terminating Sams and Gray, the Respondent called Supervisor Jeff Davis, Manufacturing Manager Lloyd Covill, Plant Engineer Andy Lepcik, employee Regina Pinkston, and Executive Vice President and Plant Manager Jack Johnson.

Supervisor Davis testified that on the afternoon of January 16, 1989, he observed employee Sams walking from Gray's press to his own and appear to be hiding something behind his leg and looking around as he walked as if checking to see if he was being watched. He then observed Sams go to his own work area and throw the item into his trashcan which, according to Davis, was not full. Davis testified he ''had to reach down into the trash can and pull the posts up out of the trash.'' When he approached, Davis told him there were elbows which had been covered with rubber when Gray ran them on his press. Davis then took them to Gray's table and told Gray to leave them there. Davis testified he subsequently, after Gray had left, took the elbows into the office and told Manufacturing Manager Covill about the incident. According to the testimony of Davis, as corroborated by Covill and Plant Engineer Klepcik, Gray should have put these elbows into his own scrap box which is painted red. Each employee is assigned his own scrap box which is painted red and they are to place all damaged products into their own scrap box and note the amount and type of damaged scrap on routing sheets assigned to them. Plant Engineer Klepcik routinely goes through all of the scrap items and determines whether they should be thrown away or whether they can be salvaged. He testified that normally only 10 percent of the scraped items are salvageable.

Manufacturing Manager Covill testified he told Executive Vice President and Plant Manager Johnson of the incident and recommended the termination of both Sams and Gray. Johnson testified he was out of town on the 17th and checked with Respondent's attorneys regarding the termination as he was aware of the union activities of Sams and Gray and wanted his actions to be correct. He testified he was also advised of the contents of their personnel files which showed that both Sams and Gray had received a final warning for absenteeism and decided there was nothing in their files to justify less than discharge. He testified that the elbows were of approximately $7 in value but that the failure to record the scrap on the routing tickets and the disposal of the scrap in the trash were not tolerable and a threat to production. There has been no prior incident known of this type. The closest incident involved an employee who was discharged before this incident for running excessive defective products and passing them onto the next department.

Analysis

I find the General Counsel has not established a prima facie case of a violation of the Act by Respondent's discharge of employees Roger Sams and Robert Gray. Initially there was no evidence of antiunion animus in this case or of any unlawful actions by Respondent prior to the discharges. It is well established that in the absence of direct evidence, animus is not lightly to be inferred and I find no basis for inferring animus in this case. *NLRB v. Gulf States United Telephone Co.*, 694 F.2d 92 (5th Cir. 1982); *McLean Trucking Co. v. NLRB*, 626 F.2d 1168 (4th Cir. 1980); *NLRB v. Pfizer, Inc.*, 629 F.2d 1272 (7th Cir. 1980). Although the suddenness of the termination at the meeting without affording Sams and Gray an opportunity to explain their actions in this case does give rise to a suspicion that the terminations were motivated by reprisals for their engagement in union activities, mere suspicion is insufficient to support violation of the Act. *Joshua Associates*, 285 NLRB 397 (1987); *Rob-*

ins Federal Credit Union, 273 NLRB 1352 (1985). I find Supervisor Davis to be a credible witness who testified in a forthright manner and who was not himself involved in the decision to discharge Sams and Gray. I further found the testimony of Covill and Johnson to be credible and credit their testimony that the employees were discharged for violation of company policy with regard to setting aside scrap and properly documenting it.

I thus find the evidence is insufficient to establish that Respondent's discharge of Sams and Gray was motivated by Respondent's animus toward them because of their union activities. Assuming arguendo that the General Counsel has established a prima facie case of a violation of the Act, I find that the Respondent has rebutted the prima facie case by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (1980), enfd. on other grounds 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *Roure Bertran Dupont, Inc.*, 271 NLRB 443 (1984); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

B. *The Alleged Verbal Warning and Harassment*

Employee Karen Hice testified that she was an active union supporter and passed out union information to employees and also management personnel of Respondent. She also solicited and obtained union authorization cards from other employees.

Hice testified that on February 26, 1990, she was told by Executive Vice President and Plant Manager Jack Johnson and Manufacturing Manager Lloyd Covill to stop ''harassing'' other employees and that if she did not, further action would be taken. She was not informed as to whom she had allegedly harassed or the circumstances thereof.

Hice testified further in April 1990 that she was subsequently called into a conference room and was told to read the Respondent's policy on harassment by Johnson and Covill. The policy is as follows:

NO HARASSMENT POLICY

> We do not tolerate harassment of any of our employees. Any form of harassment related to an individual's race, color, sex, religion, or national origin, citizenship status, age, or handicap is a violation of this policy and will be treated as a disciplinary matter. For these purposes, the term harassment includes slurs and any other offensive remarks, jokes, other verbal, graphic, or physical conduct. Harassment also includes sexual advances, requests for sexual favors, unwelcome or offensive touching and other verbal, graphic, or physical conduct of a sexual nature. If you have any questions about what constitutes harassing behavior, ask the Personnel Assistant.
>
> Violation of this policy will subject an employee to disciplinary action, up to and including immediate discharge.
>
> If you feel that you are being harassed by another employee, you should immediately notify your leadperson. If you do not feel that the matter can be discussed with your leadperson, you should contact the Personnel Assistant or the General Manager and arrange for a meeting to discuss your complaint. You may be assured that you will not be penalized in any whay for reporting a harassment problem.
>
> Harassment of our employees in connection with their work by non-employees may also be a violation of this policy. Any employee who observes any harassment of an employee by a non-employee should report such harassment to his or her lead person. Appropriate action will be taken against violation of this policy by any non-employee.
>
> We cannot help resolve a harassment problem unless we know about it. Therefore, it is your responsibility to bring those kinds of problems to our attention so that we can take whatever steps are necessary to correct the problem.

Hice asked whether she had harassed anyone but was not given any answers and has permitted to leave after she had read the policy. Hice's testimony was unrebutted and I credit it.

Analysis

I find that the comments to Hice in February were a verbal warning to Hice to cease her union activities with an implied threat of retaliation or discipline if she did not. There as no evidence that she has violating any legitimate rules or policies of Respondent and this Respondent has presented no justification for this warning. I accordingly find that this warning was an unlawful disciplinary action and that Respondent thereby violated Section 8(a)(3) and (1) of the Act.

I further find that the incident in April wherein Hice has called into the office and told to read the Respondent's policy against harassment without explanation of an reason therefor was unlawful harassment and intimidation directed against Hice because of her union activities and that Respondent thereby violated Section 8(a)(1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices as found in section III, above, in conjunction with the business of Respondent as found in section I, above, have the effect of burdening commerce and constitute unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

1. Respondent CEC Chardon Electrical is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Industrial Union Department, AFL–CIO, and the United Rubber Workers of America, AFL–CIO are labor organizations within the meaning of Section 2(5) of the Act.
3. Respondent did not violate the Act by its discharge of its employees Roger Sams and Robert Gray.
4. Respondent violated Section 8(a)(3) and (1) of the Act by the issuance of the verbal warning to employee Karen Hice on February 26, 1990.
5. Respondent violated Section 8(a)(1) of the Act by the harassment of employee Karen Hice on April 6, 1990.
6. The above unfair labor practices have the effect of burdening commerce and are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has violated the Act, it shall be ordered to cease and desist therefrom and to take certain affirmative actions, including the posting of an appropriate notice, designed to effectuate the purposes of the Act. It shall also be ordered to rescind the verbal warning issued to employee Karen Hice and to remove from its records of any references thereto and to notify employee Karen Hice in writing of this and that said verbal warning shall not be used against her as the basis for any discipline in the future and that it will not harass her in the future because of her engagement in union actiities.

Accordingly, on these finding of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, CEC Chardon Electrical, Greeneville, Tennessee, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unlawfully issuing verbal warnings of disciplinary action and harassing its employees because of their engagement in protected concerted activities under the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful verbal warning issued to employee Karen Hice and remove from its records any references thereto and inform her in writing of this and that the said unlawful verbal warning will not be used against her as the basis for any discipline or other adverse personnel actions in the future and that it will not harass her in the future because of her engagement in union activities.

(b) Post at its Greenville, Tennessee, facility copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint is otherwise dismissed with respect to the alleged unlawful discharges.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The Nationl Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT issue verbal warnings to our employees or harass them because of their engagement in union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you under Section 7 of the Act.

WE WILL rescind the warning issued to Karen Hice on February 26, 1990, and remove from our files any references thereof, and notify Karen Hice in writing of this and that the verbal warning shall not be used as a basis for discipline or for any adverse personnel action against her in the future and that WE WILL NOT harass her in the future because of her engagement in union activities.

CEC CHARDON ELECTRICAL